

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 09 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MANUEL NUNEZ-NUNEZ,

Defendant - Appellant.

No. 04-10121

D.C. No. CR-03-50188-DGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Argued and Submitted October 18, 2005
San Francisco, California

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

1. Manuel Nunez-Nunez's appeal is not barred by the appeal waiver in the Arizona plea agreement because the waiver did not encompass his right to appeal the revocation of his supervised release.

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

2. A defendant's Sixth Amendment right is implicated only when "a judge seeks to impose a sentence that is not solely based on 'facts reflected in the jury verdict or *admitted by the defendant.*'" *United States v. Booker*, 125 S. Ct. 738, 749 (2005) (quoting *Blakely v. Washington*, 124 S. Ct. 2531, 2537 (2004)) (emphasis added). Because Nunez-Nunez admitted the facts upon which the additional sentence was based, no Sixth Amendment violation occurred.
3. The government's agreement to recommend the low end of the Guidelines range did not extend to sentencing for the supervised release violation. *See United States v. Gerace*, 997 F.2d 1293, 1294-95 (9th Cir. 1993).
4. Because Nunez-Nunez was given actual notice at the sentencing hearing of the terms of his supervised release, the violations of which served as the bases for the revocation, his sentence was lawfully imposed. *See United States v. Ortuño-Higareda*, 421 F.3d 917, 922 (9th Cir. 2005).

AFFIRMED.